

109TH CONGRESS  
1ST SESSION

# S. 714

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## AN ACT

To amend section 227 of the Communications Act of 1934 (47 U.S.C. 227) relating to the prohibition on junk fax transmissions.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Junk Fax Prevention  
5       Act of 2005”.

1 **SEC. 2. PROHIBITION ON FAX TRANSMISSIONS CONTAINING**  
 2 **UNSOLICITED ADVERTISEMENTS.**

3 (a) PROHIBITION.—Section 227(b)(1)(C) of the Com-  
 4 munications Act of 1934 (47 U.S.C. 227(b)(1)(C)) is  
 5 amended to read as follows:

6 “(C) to use any telephone facsimile ma-  
 7 chine, computer, or other device to send, to a  
 8 telephone facsimile machine, an unsolicited ad-  
 9 vertisement, unless—

10 “(i) the unsolicited advertisement is  
 11 from a sender with an established business  
 12 relationship with the recipient;

13 “(ii) the sender obtained the number  
 14 of the telephone facsimile machine  
 15 through—

16 “(I) the voluntary communication  
 17 of such number, within the context of  
 18 such established business relationship,  
 19 from the recipient of the unsolicited  
 20 advertisement, or

21 “(II) a directory, advertisement,  
 22 or site on the Internet to which the  
 23 recipient voluntarily agreed to make  
 24 available its facsimile number for pub-  
 25 lic distribution,

except that this clause shall not apply in the case of an unsolicited advertisement that is sent based on an established business relationship with the recipient that was in existence before the date of enactment of the Junk Fax Prevention Act of 2005 if the sender possessed the facsimile machine number of the recipient before such date of enactment; and

“(iii) the unsolicited advertisement contains a notice meeting the requirements under paragraph (2)(D),

except that the exception under clauses (i) and (ii) shall not apply with respect to an unsolicited advertisement sent to a telephone facsimile machine by a sender to whom a request has been made not to send future unsolicited advertisements to such telephone facsimile machine that complies with the requirements under paragraph (2)(E); or”.

(b) DEFINITION OF ESTABLISHED BUSINESS RELATIONSHIP.—Section 227(a) of the Communications Act of 1934 (47 U.S.C. 227(a)) is amended—

(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and

1           (2) by inserting after paragraph (1) the fol-  
 2       lowing:

3           “(2) The term ‘established business relation-  
 4       ship’, for purposes only of subsection (b)(1)(C)(i),  
 5       shall have the meaning given the term in section  
 6       64.1200 of title 47, Code of Federal Regulations, as  
 7       in effect on January 1, 2003, except that—

8           “(A) such term shall include a relationship  
 9       between a person or entity and a business sub-  
 10      scriber subject to the same terms applicable  
 11      under such section to a relationship between a  
 12      person or entity and a residential subscriber;  
 13      and

14          “(B) an established business relationship  
 15      shall be subject to any time limitation estab-  
 16      lished pursuant to paragraph (2)(G)).”.

17       (c) REQUIRED NOTICE OF OPT-OUT OPPOR-  
 18   TUNITY.—Section 227(b)(2) of the Communications Act  
 19   of 1934 (47 U.S.C. 227(b)(2)) is amended—

20          (1) in subparagraph (B), by striking “and” at  
 21      the end;

22          (2) in subparagraph (C), by striking the period  
 23      at the end and inserting a semicolon; and

24          (3) by adding at the end the following:

1           “(D) shall provide that a notice contained  
2           in an unsolicited advertisement complies with  
3           the requirements under this subparagraph only  
4           if—

5                   “(i) the notice is clear and con-  
6                   spicuous and on the first page of the unso-  
7                   licited advertisement;

8                   “(ii) the notice states that the recipi-  
9                   ent may make a request to the sender of  
10                  the unsolicited advertisement not to send  
11                  any future unsolicited advertisements to a  
12                  telephone facsimile machine or machines  
13                  and that failure to comply, within the  
14                  shortest reasonable time, as determined by  
15                  the Commission, with such a request meet-  
16                  ing the requirements under subparagraph  
17                  (E) is unlawful;

18                  “(iii) the notice sets forth the require-  
19                  ments for a request under subparagraph  
20                  (E);

21                  “(iv) the notice includes—

22                          “(I) a domestic contact telephone  
23                          and facsimile machine number for the  
24                          recipient to transmit such a request to  
25                          the sender; and

1 “(II) a cost-free mechanism for a  
 2 recipient to transmit a request pursu-  
 3 ant to such notice to the sender of the  
 4 unsolicited advertisement; the Com-  
 5 mission shall by rule require the send-  
 6 er to provide such a mechanism and  
 7 may, in the discretion of the Commis-  
 8 sion and subject to such conditions as  
 9 the Commission may prescribe, ex-  
 10 empt certain classes of small business  
 11 senders, but only if the Commission  
 12 determines that the costs to such class  
 13 are unduly burdensome given the rev-  
 14 enues generated by such small busi-  
 15 nesses;

16 “(v) the telephone and facsimile ma-  
 17 chine numbers and the cost-free mecha-  
 18 nism set forth pursuant to clause (iv) per-  
 19 mit an individual or business to make such  
 20 a request at any time on any day of the  
 21 week; and

22 “(vi) the notice complies with the re-  
 23 quirements of subsection (d);”.

24 (d) REQUEST TO OPT-OUT OF FUTURE UNSOLIC-  
 25 ITED ADVERTISEMENTS.—Section 227(b)(2) of the Com-

1 munications Act of 1934 (47 U.S.C. 227(b)(2)), as  
 2 amended by subsection (c), is further amended by adding  
 3 at the end the following:

4 “(E) shall provide, by rule, that a request  
 5 not to send future unsolicited advertisements to  
 6 a telephone facsimile machine complies with the  
 7 requirements under this subparagraph only if—

8 “(i) the request identifies the tele-  
 9 phone number or numbers of the telephone  
 10 facsimile machine or machines to which the  
 11 request relates;

12 “(ii) the request is made to the tele-  
 13 phone or facsimile number of the sender of  
 14 such an unsolicited advertisement provided  
 15 pursuant to subparagraph (D)(iv) or by  
 16 any other method of communication as de-  
 17 termined by the Commission; and

18 “(iii) the person making the request  
 19 has not, subsequent to such request, pro-  
 20 vided express invitation or permission to  
 21 the sender, in writing or otherwise, to send  
 22 such advertisements to such person at such  
 23 telephone facsimile machine;”.

24 (e) AUTHORITY TO ESTABLISH NONPROFIT EXCEP-  
 25 TION.—Section 227(b)(2) of the Communications Act of

1 1934 (47 U.S.C. 227(b)(2)), as amended by subsections  
 2 (c) and (d), is further amended by adding at the end the  
 3 following:

4                   “(F) may, in the discretion of the Commis-  
 5                   sion and subject to such conditions as the Com-  
 6                   mission may prescribe, allow professional or  
 7                   trade associations that are tax-exempt nonprofit  
 8                   organizations to send unsolicited advertisements  
 9                   to their members in furtherance of the associa-  
 10                  tion’s tax-exempt purpose that do not contain  
 11                  the notice required by paragraph (1)(C)(iii), ex-  
 12                  cept that the Commission may take action  
 13                  under this subparagraph only—

14                   “(i) by regulation issued after public  
 15                   notice and opportunity for public comment;  
 16                   and

17                   “(ii) if the Commission determines  
 18                   that such notice required by paragraph  
 19                   (1)(C)(iii) is not necessary to protect the  
 20                   ability of the members of such associations  
 21                   to stop such associations from sending any  
 22                   future unsolicited advertisements; and”.

23           (f) AUTHORITY TO ESTABLISH TIME LIMIT ON ES-  
 24           TABLISHED BUSINESS RELATIONSHIP EXCEPTION.—Sec-  
 25           tion 227(b)(2) of the Communications Act of 1934 (47



1 U.S.C. 227(b)(2)), as amended by subsections (c), (d),  
 2 and (e) of this section, is further amended by adding at  
 3 the end the following:

4 “(G)(i) may, consistent with clause (ii),  
 5 limit the duration of the existence of an estab-  
 6 lished business relationship, however, before es-  
 7 tablishing any such limits, the Commission  
 8 shall—

9 “(I) determine whether the existence  
 10 of the exception under paragraph (1)(C)  
 11 relating to an established business relation-  
 12 ship has resulted in a significant number  
 13 of complaints to the Commission regarding  
 14 the sending of unsolicited advertisements  
 15 to telephone facsimile machines;

16 “(II) determine whether a significant  
 17 number of any such complaints involve un-  
 18 solicited advertisements that were sent on  
 19 the basis of an established business rela-  
 20 tionship that was longer in duration than  
 21 the Commission believes is consistent with  
 22 the reasonable expectations of consumers;

23 “(III) evaluate the costs to senders of  
 24 demonstrating the existence of an estab-  
 25 lished business relationship within a speci-

1           fied period of time and the benefits to re-  
 2           cipients of establishing a limitation on such  
 3           established business relationship; and

4                 “(IV) determine whether with respect  
 5           to small businesses, the costs would not be  
 6           unduly burdensome; and

7                 “(ii) may not commence a proceeding to  
 8           determine whether to limit the duration of the  
 9           existence of an established business relationship  
 10          before the expiration of the 3-month period that  
 11          begins on the date of the enactment of the  
 12          Junk Fax Prevention Act of 2005.”.

13          (g)     UNSOLICITED     ADVERTISEMENT.—Section  
 14   227(a)(5) of the Communications Act of 1934, as so re-  
 15   designated by subsection (b)(1), is amended by inserting  
 16   “, in writing or otherwise” before the period at the end.

17          (h)     REGULATIONS.—Except as provided in section  
 18   227(b)(2)(G)(ii) of the Communications Act of 1934 (as  
 19   added by subsection (f)), not later than 270 days after  
 20   the date of enactment of this Act, the Federal Commu-  
 21   nications Commission shall issue regulations to implement  
 22   the amendments made by this section.

1 **SEC. 3. FCC ANNUAL REPORT REGARDING JUNK FAX EN-**  
2 **FORCEMENT.**

3 Section 227 of the Communications Act of 1934 (47  
4 U.S.C. 227) is amended by adding at the end the fol-  
5 lowing:

6 “(g) **JUNK FAX ENFORCEMENT REPORT.**—The Com-  
7 mission shall submit an annual report to Congress regard-  
8 ing the enforcement during the past year of the provisions  
9 of this section relating to sending of unsolicited advertise-  
10 ments to telephone facsimile machines, which report shall  
11 include—

12 “(1) the number of complaints received by the  
13 Commission during such year alleging that a con-  
14 sumer received an unsolicited advertisement via tele-  
15 phone facsimile machine in violation of the Commis-  
16 sion’s rules;

17 “(2) the number of citations issued by the Com-  
18 mission pursuant to section 503 during the year to  
19 enforce any law, regulation, or policy relating to  
20 sending of unsolicited advertisements to telephone  
21 facsimile machines;

22 “(3) the number of notices of apparent liability  
23 issued by the Commission pursuant to section 503  
24 during the year to enforce any law, regulation, or  
25 policy relating to sending of unsolicited advertise-  
26 ments to telephone facsimile machines;

1           “(4) for each notice referred to in paragraph  
2       (3)—

3           “(A) the amount of the proposed forfeiture  
4       penalty involved;

5           “(B) the person to whom the notice was  
6       issued;

7           “(C) the length of time between the date  
8       on which the complaint was filed and the date  
9       on which the notice was issued; and

10          “(D) the status of the proceeding;

11          “(5) the number of final orders imposing for-  
12       feiture penalties issued pursuant to section 503 dur-  
13       ing the year to enforce any law, regulation, or policy  
14       relating to sending of unsolicited advertisements to  
15       telephone facsimile machines;

16          “(6) for each forfeiture order referred to in  
17       paragraph (5)—

18          “(A) the amount of the penalty imposed by  
19       the order;

20          “(B) the person to whom the order was  
21       issued;

22          “(C) whether the forfeiture penalty has  
23       been paid; and

24          “(D) the amount paid;

1 “(7) for each case in which a person has failed  
 2 to pay a forfeiture penalty imposed by such a final  
 3 order, whether the Commission referred such matter  
 4 for recovery of the penalty; and

5 “(8) for each case in which the Commission re-  
 6 ferred such an order for recovery—

7 “(A) the number of days from the date the  
 8 Commission issued such order to the date of  
 9 such referral;

10 “(B) whether an action has been com-  
 11 menced to recover the penalty, and if so, the  
 12 number of days from the date the Commission  
 13 referred such order for recovery to the date of  
 14 such commencement; and

15 “(C) whether the recovery action resulted  
 16 in collection of any amount, and if so, the  
 17 amount collected.”.

18 **SEC. 4. GAO STUDY OF JUNK FAX ENFORCEMENT.**

19 (a) IN GENERAL.—The Comptroller General of the  
 20 United States shall conduct a study regarding complaints  
 21 received by the Federal Communications Commission con-  
 22 cerning unsolicited advertisements sent to telephone fac-  
 23 simile machines, which study shall determine—

1           (1) the mechanisms established by the Commis-  
2           sion to receive, investigate, and respond to such  
3           complaints;

4           (2) the level of enforcement success achieved by  
5           the Commission regarding such complaints;

6           (3) whether complainants to the Commission  
7           are adequately informed by the Commission of the  
8           responses to their complaints; and

9           (4) whether additional enforcement measures  
10          are necessary to protect consumers, including rec-  
11          ommendations regarding such additional enforce-  
12          ment measures.

13       (b) **ADDITIONAL ENFORCEMENT REMEDIES.**—In  
14       conducting the analysis and making the recommendations  
15       required under subsection (a)(4), the Comptroller General  
16       shall specifically examine—

17           (1) the adequacy of existing statutory enforce-  
18           ment actions available to the Commission;

19           (2) the adequacy of existing statutory enforce-  
20           ment actions and remedies available to consumers;

21           (3) the impact of existing statutory enforcement  
22           remedies on senders of facsimiles;

23           (4) whether increasing the amount of financial  
24           penalties is warranted to achieve greater deterrent  
25           effect; and

1           (5) whether establishing penalties and enforce-  
2           ment actions for repeat violators or abusive viola-  
3           tions similar to those established under section 1037  
4           of title 18, United States Code, would have a greater  
5           deterrent effect.

6           (c) REPORT.—Not later than 270 days after the date  
7           of enactment of this Act, the Comptroller General shall  
8           submit a report on the results of the study under this sec-  
9           tion to the Committee on Commerce, Science, and Trans-  
10          portation of the Senate and the Committee on Energy and  
11          Commerce of the House of Representatives.

Passed the Senate June 24, 2005.

Attest:

*Secretary.*

109TH CONGRESS  
1ST SESSION

**S. 714**

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**AN ACT**

To amend section 227 of the Communications Act of 1934 (47 U.S.C. 227) relating to the prohibition on junk fax transmissions.